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3 ALFONSO MOUZON,  
4 Plaintiff,

5 v.  
6

7 ALAMEDA COUNTY,  
8 Defendant.  
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10 Case No. 24-cv-01907-DMR (PR)

11 **AMENDED ORDER OF SERVICE**

12 **I. INTRODUCTION**

13 Plaintiff Alfonso Mouzon, who is a civil detainee currently being held at the Coalinga  
14 State Hospital, filed a *pro se* civil rights action pursuant to 42 U.S.C. § 1983, alleging Alameda  
15 County jail officials violated his constitutional rights when he was transferred for three months in  
16 2021 to the Alameda County Jail (“ACJ”), where he was temporarily housed during the pendency  
17 of civil commitment proceedings against him under the Sexually Violent Predators Act, *see Cal.*  
18 *Welf. & Inst. Code § 6600 et seq. (“SVPA”)*. Dkt. 12 at 4.<sup>1</sup> This matter has been assigned to the  
19 undersigned Magistrate Judge. Plaintiff’s motion for leave to proceed *in forma pauperis* will be  
20 granted in a separate written Order. The operative complaint is the amended complaint. *Id.*

21 In his amended complaint, Plaintiff does not name any individual Defendants. *Id.* Instead,  
22 he names Defendant Alameda County in its official capacity as the “municipality responsible for  
23 the policies or the lack of policies, customs and practices guiding and governing on enforcing the  
24 conditions of confinement for [Sexually Violent Predators (“SVPs”)] within the county jail.” *Id.*  
Plaintiff seeks injunctive relief and monetary damages. *Id.* at 8.

25 Venue is proper because certain events giving rise to the claims are alleged to have  
26 occurred at ACJ, which is located in this judicial district. *See 28 U.S.C. § 1391(b).*

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<sup>1</sup> Page number citations refer to those assigned by the court’s electronic case management  
filing system and not those assigned by Plaintiff.

**II. DISCUSSION****A. Standard of Review**

A federal court must conduct a preliminary screening in any case in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). In its review, the court must identify any cognizable claims and dismiss claims that are frivolous, malicious, fail to state a claim upon which relief may be granted or seek monetary relief from a defendant who is immune from such relief. *Id.* § 1915A(b)(1), (2). *Pro se* pleadings must be liberally construed. *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1988). Federal Rule of Civil Procedure 8(a)(2) requires only “a short and plain statement of the claim showing that the pleader is entitled to relief.” To comport with Rule 8, “[s]pecific facts are not necessary; the statement need only give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.” *Erickson v. Pardus*, 551 U.S. 89, 93 (2007) (citations omitted). Although to state a claim a complaint “does not need detailed factual allegations, . . . a plaintiff’s obligation to provide the ‘grounds’ of his ‘entitle[ment] to relief’ requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do . . . . Factual allegations must be enough to raise a right to relief above the speculative level.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (citations omitted). A complaint must proffer “enough facts to state a claim to relief that is plausible on its face.” *Id.* at 570. The Supreme Court explained the “plausible on its face” standard of *Twombly*: “While legal conclusions can provide the framework of a complaint, they must be supported by factual allegations. When there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement to relief.” *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009). To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements: (1) that a right secured by the Constitution or laws of the United States was violated, and (2) that the alleged violation was committed by a person acting under the color of state law. *West v. Atkins*, 487 U.S. 42, 48 (1988).

**B. Legal Claims**

From July through September 2021, Plaintiff was housed at ACJ while awaiting his civil

1 commitment proceedings. Dkt. 12 at 4.

2 First, Plaintiff claims that Defendant Alameda County has a policy (“Policy”) of failing to  
3 treat persons detained under the SVPA differently from the general prison population, in violation  
4 of his Fourteenth Amendment rights. *See generally*, Dkt. 12; *see also Jones v. Blanas*, 393 F.3d  
5 918 (9th Cir. 2004) (discussing similar claims). A civil detainee awaiting adjudication is entitled  
6 to conditions of confinement that are not punitive; a presumption of punitive conditions arises  
7 where such individual is detained under conditions identical or similar to, or more restrictive than,  
8 those under which pretrial criminal detainees are held, or where such individual is detained under  
9 conditions more restrictive than those he would face upon civil commitment. *See Jones*, 393 F.3d  
10 at 934. If the presumption applies, a defendant is allowed to demonstrate the existence of  
11 legitimate, non-punitive interests justifying the conditions under which the detainee was held, and  
12 to show the restrictions imposed were not excessive in relation to such interests. *See id.* at 934-35.  
13 Although not every objectionable condition or restriction to which a plaintiff is subjected as a civil  
14 detainee violates his federal constitutional rights, the allegations of Plaintiff herein, liberally  
15 construed, are sufficient to state a cognizable claim under section 1983 for denial of the  
16 protections to which he is entitled under the Due Process Clause.

17 Second, Plaintiff alleges that Defendant Alameda County is liable in its official capacity  
18 for instituting and abiding by the aforementioned Policy, which

19 does not state, nor does any of the other policy, on how SVPs are to  
20 be treated, this makes the [Policy] deficient enough to cause violation  
21 of rights . . . [as it] has left custom and practice then to become the  
22 standard operating procedure on how SVP[s] are to be treated . . .  
[and] . . . these customs and practices do not hold up to the *Jones* . . .  
standard.

23 Dkt. 12 at 7. There is no respondeat superior liability under section 1983, i.e. no liability under  
24 the theory that one is liable simply because he employs a person who has violated a plaintiff's  
25 rights. *See Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 691 (1978); *Taylor v. List*, 880 F.2d 1040,  
26 1045 (9th Cir. 1989). Local governments, such as Defendant Alameda County, are “persons”  
27 subject to liability under section 1983 where official policy or custom causes a constitutional tort.  
*See Monell*, 436 U.S. at 690. To impose municipal liability under section 1983 for a violation of

1 constitutional rights, a plaintiff must show: “(1) that [the plaintiff] possessed a constitutional right  
2 of which [he] was deprived; (2) that the municipality had a policy; (3) that this policy amounts to  
3 deliberate indifference to the plaintiff’s constitutional right; and (4) that the policy is the moving  
4 force behind the constitutional violation.” *See Plumeau v. Sch. Dist. #40 Cnty. of Yamhill*, 130  
5 F.3d 432, 438 (9th Cir. 1997) (citations and internal quotation marks omitted). For municipal  
6 liability, a plaintiff must plead sufficient facts regarding the specific nature of the alleged policy,  
7 custom or practice to allow the defendant to effectively defend itself, and these facts must  
8 plausibly suggest that the plaintiff is entitled to relief. *See AE v. Cnty. of Tulare*, 666 F.3d 631,  
9 636-37 (9th Cir. 2012). Here, the court finds that, liberally construed, Plaintiff alleges facts  
10 showing unconstitutional conditions at the ACJ as well as the Policy, which he claims is the  
11 moving force behind the constitutional violation. *See generally* Dkt. 12. Therefore, the court  
12 finds that Plaintiff has stated cognizable policy-based claim against Defendant Alameda County  
13 under *Monell*. *See* 436 U.S. at 690.

14 **III. CONCLUSION**

15 For the foregoing reasons, the court orders as follows:

16 1. Plaintiff states a due process and *Monell* claim against Defendant Alameda County.  
17 2. **The Clerk of the Court shall send to Defendant Alameda County a Notice of  
Lawsuit and Request for Waiver of Service of Summons, two copies of the Waiver of Service  
of Summons, a copy of the operative complaint and all attachments thereto (dkt. 12), a copy  
of this Amended Order, and the notice of assignment of prisoner case to a United States  
magistrate judge and accompanying magistrate judge jurisdiction consent or declination to  
consent.**

23 **The Clerk shall also send a copy of the operative complaint and a copy of this  
Amended Order to the Alameda County Counsel’s Office. Additionally, the Clerk shall send  
a copy of this Amended Order to Plaintiff.**

26 3. Defendant is cautioned that Rule 4 of the Federal Rules of Civil Procedure requires  
27 Defendant to cooperate in saving unnecessary costs of service of the summons and operative  
28 complaint. **If service is waived, this action will proceed as if Defendant had been served on**

1           the date that the waiver is filed, except that pursuant to Rule 12(a)(1)(B), Defendant will not  
2           be required to serve and file an answer before sixty (60) days from the date on which the  
3           request for waiver was sent. (This allows a longer time to respond than would be required if  
4           formal service of summons is necessary.) Defendant is asked to read the statement set forth  
5           at the foot of the waiver form that more completely describes the duties of the parties with  
6           regard to waiver of service of the summons. If service is waived after the date provided in  
7           the Notice but before Defendant has been personally served, the Answer shall be due sixty  
8           (60) days from the date on which the request for waiver was sent or twenty (20) days from  
9           the date the waiver form is filed, whichever is later.

10           4.       Defendant shall answer the amended complaint in accordance with the Federal  
11           Rules of Civil Procedure. The following briefing schedule shall govern dispositive motions:

12           a.       No later than **sixty (60) days** from the date their answer is due, Defendant  
13           shall file a motion for summary judgment or other dispositive motion. The motion must be  
14           supported by adequate factual documentation, must conform in all respects to Federal Rule of  
15           Civil Procedure 56, and must include as exhibits all records and incident reports stemming from  
16           the events at issue. A motion for summary judgment also must be accompanied by a *Rand*<sup>2</sup> notice  
17           so that Plaintiff will have fair, timely and adequate notice of what is required of him in order to  
18           oppose the motion. *Woods v. Carey*, 684 F.3d 934, 935 (9th Cir. 2012) (notice requirement set out  
19           in Rand must be served concurrently with motion for summary judgment). A motion to dismiss  
20           for failure to exhaust available administrative remedies must be accompanied by a similar notice.  
21           However, the court notes that under the new law of the circuit, in the rare event that a failure to  
22           exhaust is clear on the face of the amended complaint, Defendant may move for dismissal under  
23           Rule 12(b)(6) as opposed to the previous practice of moving under an unenumerated Rule 12(b)  
24           motion. *Albino v. Baca*, 747 F.3d 1162, 1166 (9th Cir. 2014) (en banc) (overruling *Wyatt v.*  
25           *Terhune*, 315 F.3d 1108, 1119 (9th Cir. 2003), which held that failure to exhaust available  
26           administrative remedies under the Prison Litigation Reform Act should be raised by a defendant as

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2           <sup>2</sup> *Rand v. Rowland*, 154 F.3d 952 (9th Cir. 1998).

1 an unenumerated Rule 12(b) motion). Otherwise if a failure to exhaust is not clear on the face of  
2 the amended complaint, Defendant must produce evidence proving failure to exhaust in a motion  
3 for summary judgment under Rule 56. *Id.* If undisputed evidence viewed in the light most  
4 favorable to Plaintiff shows a failure to exhaust, Defendant is entitled to summary judgment under  
5 Rule 56. *Id.* But if material facts are disputed, summary judgment should be denied and the  
6 district judge rather than a jury should determine the facts in a preliminary proceeding. *Id.* at  
7 1168.

8 If Defendant is of the opinion that this case cannot be resolved by summary judgment, they  
9 shall so inform the court prior to the date the summary judgment motion is due. All papers filed  
10 with the court shall be promptly served on Plaintiff.

11 b. Plaintiff's opposition to the dispositive motion shall be filed with the court  
12 and served on Defendant no later than **twenty-eight (28) days** after the date on which Defendant's  
13 motion is filed.

14 c. Plaintiff is advised that a motion for summary judgment under Rule 56 of  
15 the Federal Rules of Civil Procedure will, if granted, end your case. Rule 56 tells you what you  
16 must do in order to oppose a motion for summary judgment. Generally, summary judgment must  
17 be granted when there is no genuine issue of material fact—that is, if there is no real dispute about  
18 any fact that would affect the result of your case, the party who asked for summary judgment is  
19 entitled to judgment as a matter of law, which will end your case. When a party you are suing  
20 makes a motion for summary judgment that is properly supported by declarations (or other sworn  
21 testimony), you cannot simply rely on what your complaint says. Instead, you must set out  
22 specific facts in declarations, depositions, answers to interrogatories, or authenticated documents,  
23 as provided in Rule 56(e), that contradicts the facts shown in the defendant's declarations and  
24 documents and show that there is a genuine issue of material fact for trial. If you do not submit  
25 your own evidence in opposition, summary judgment, if appropriate, may be entered against you.  
26 If summary judgment is granted, your case will be dismissed and there will be no trial. *Rand*, 154  
27 F.3d at 962-63.

28 Plaintiff also is advised that—in the rare event that Defendant argues that the failure to

1 exhaust is clear on the face of the amended complaint—a motion to dismiss for failure to exhaust  
2 available administrative remedies under 42 U.S.C. § 1997e(a) will, if granted, end your case, albeit  
3 without prejudice. To avoid dismissal, you have the right to present any evidence to show that  
4 you did exhaust your available administrative remedies before coming to federal court. Such  
5 evidence may include: (1) declarations, which are statements signed under penalty of perjury by  
6 you or others who have personal knowledge of relevant matters; (2) authenticated documents—  
7 documents accompanied by a declaration showing where they came from and why they are  
8 authentic, or other sworn papers such as answers to interrogatories or depositions; (3) statements  
9 in your complaint insofar as they were made under penalty of perjury and they show that you have  
10 personal knowledge of the matters state therein. As mentioned above, in considering a motion to  
11 dismiss for failure to exhaust under Rule 12(b)(6) or failure to exhaust in a summary judgment  
12 motion under Rule 56, the district judge may hold a preliminary proceeding and decide disputed  
13 issues of fact with regard to this portion of the case. *Albino*, 747 F.3d at 1168.

14 (The notices above do not excuse Defendant's obligation to serve similar notices again  
15 concurrently with motions to dismiss for failure to exhaust available administrative remedies and  
16 motions for summary judgment. *Woods*, 684 F.3d at 935.)

17 d. Defendant shall file a reply brief no later than **fourteen (14) days** after the  
18 date Plaintiff's opposition is filed.

19 e. The motion shall be deemed submitted as of the date the reply brief is due.  
20 No hearing will be held on the motion unless the court so orders at a later date.

21 5. Discovery may be taken in this action in accordance with the Federal Rules of Civil  
22 Procedure. Leave of the court pursuant to Rule 30(a)(2) is hereby granted to Defendant to depose  
23 Plaintiff and any other necessary witnesses confined in prison.

24 6. All communications by Plaintiff with the court must be served on Defendant or  
25 their counsel, once counsel has been designated, by mailing a true copy of the document to them.

26 7. It is Plaintiff's responsibility to prosecute this case. Plaintiff must keep the court  
27 informed of any change of address and must comply with the court's orders in a timely fashion.  
28 Pursuant to Northern District Local Rule 3-11 a party proceeding *pro se* whose address changes

1 while an action is pending must promptly file a notice of change of address specifying the new  
2 address. *See L.R. 3-11(a).* The court may dismiss without prejudice a complaint when: (1) mail  
3 directed to the *pro se* party by the court has been returned to the court as not deliverable, and  
4 (2) the court fails to receive within sixty days of this return a written communication from the *pro*  
5 *se* party indicating a current address. *See L.R. 3-11(b).*

6       8. Upon a showing of good cause, requests for a reasonable extension of time will be  
7 granted provided they are filed on or before the deadline they seek to extend.

8           IT IS SO ORDERED.

9 Dated: October 15, 2025



DONNA M. RYU  
Chief Magistrate Judge